

DRAFT
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

RESOLUTION NO. R5-2005-____

AMENDING
RESOLUTION NO. R5-2003-0105
CONDITIONAL WAIVERS OF WASTE DISCHARGE REQUIREMENTS
FOR DISCHARGES FROM IRRIGATED LANDS
WITHIN THE CENTRAL VALLEY REGION
ATTACHMENT A2

WHEREAS, the California Regional Water Quality Control Board, Central Valley Region (Water Board) finds that:

1. On 11 July 2003, the Water Board adopted Resolution No. R5-2003-0105, *Conditional Waivers of Waste Discharge Requirements for Discharges From Irrigated Lands Within the Central Valley Region* (Conditional Waivers).
2. On 22 January 2004, the State Water Resources Control Board (State Water Board) adopted Order WQO 2004-0003, which upheld the Conditional Waivers and Monitoring and Reporting Programs with minor revisions.
3. On 26 February 2004, DeltaKeeper, WaterKeepers Northern California, Environment California, the Natural Resources Defense Council, Inc., and California Sportfishing Protection Alliance (collectively "DeltaKeeper"), filed a petition for peremptory writ of mandate in Sacramento County Superior Court (Court). Deltakeeper alleged that in approving the Conditional Waivers, the Water Board violated the Porter-Cologne Water Quality Control Act (Porter-Cologne Act), including California Water Code (CWC) Section 13269, and the California Environmental Quality Act (CEQA) by relying on a negative declaration instead of preparing an Environmental Impact Report (EIR).
4. On 3 March 2004, the California Farm Bureau Federation (Farm Bureau) also filed a petition for peremptory writ of mandate in Court. The Farm Bureau alleged that the scope of the required reports violated the Water Code, that the Water Board cannot require compliance with water quality objectives, that reports are subject to trade secret protection, and that access provisions of the Waiver were improper.
5. On 9 May 2005, the Court substantially upheld the Conditional Waivers, including upholding the Conditional Waivers with respect to CEQA and CWC Section 13269. The Court granted, in part, the Farm Bureau's petition with respect to staff access to private property for inspections and confidentiality of monitoring reports. The Court also remanded the matter of the "tributary rule" to agricultural dominated water bodies and constructed agricultural drains to the Water Board to clarify:

"...the extent to which the Waiver is intended to apply to agricultural dominated waterways and constructed agricultural drains and other non-stream tributaries; the extent to which the Waiver purports to impose receiving water limitations upon such water bodies; and, in light of the foregoing, the extent to which the Waiver may rely on application of the Tributary Rule for these purposes." [Ruling, at page 77]

6. On 5 August 2005, the Water Board adopted Resolution No. R5-2005-0107 amending Attachments B and C of the Conditional Waivers to address the issue of access to private property for inspections and confidentiality of monitoring reports.
7. Interested persons were notified that the Water Board would consider the adoption of a Resolution to clarify the Conditional Waivers consistent with Court Order and were provided an opportunity for a public hearing and an opportunity to submit written comments.
8. In a public hearing, all comments pertaining to the amended Resolution and its Conditional Waivers were heard and considered.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

For purposes of adoption of this Resolution, the Water Board is the lead agency pursuant to CEQA (Public Resources Code sections 21100 et seq.). The Water Board adopted Resolution R5-2003-0105, which approved the Initial Study and adopted a Negative Declaration for the Conditional Waivers. The clarification of the application of the Conditional Waivers to agricultural dominated waterways and constructed agricultural drains to comply with the Court Order as set forth in Attachment A2 do not require the Water Board to prepare a subsequent or supplemental EIR or negative declaration because the revisions do not constitute substantial changes to the project as specified in Title 14 California Code of Regulations sections 15162 or 15163.

THEREFORE BE IT RESOLVED:

1. Resolution No. R5-2003-0105, dated 11 July 2003, adopting the Conditional Waivers and as revised on 22 January 2004 by State Water Board Order WQO 2004-0003 is hereby amended based on the above findings.
2. Attachment A2 of Resolution No. R5-2003-0105 has been added and is attached to this Resolution.

I, THOMAS R. PINKOS, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, Central Valley Region, on 15 September 2005.

THOMAS R. PINKOS, Executive Officer